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Attorneys for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH MILLS AND BENJAMIN
WILKES, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

HSBC BANK NEVADA, N.A. and HSBC
CARD SERVICES, INC.,

Defendants.

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FILED

AUG 28 2013

**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Case No. 3:12-cv-04010-JST (JCS)

**AMENDED STIPULATION AND
PROPOSED ORDER RE CLASS
CERTIFICATION SCHEDULE**

Judge: The Honorable Jon S. Tigar

1 WHEREAS, pursuant to the Court's January 16, 2013 Minute Order (Dkt. No. 35),
2 Plaintiffs' Motion for Class Certification is due on September 6, 2013, with Defendants'
3 opposition due on October 4, 2013 and Plaintiffs' reply due on November 1, 2013;

4 WHEREAS, pursuant to the Court's June 13, 2013 Order (Dkt. No. 56), the hearing on
5 Plaintiffs' Motion for Class Certification is set for November 21, 2013 at 2:00 p.m.;

6 WHEREAS, on January 25, 2013, Plaintiffs served their First Sets of Requests for
7 Production of Documents and Interrogatories ("Requests");

8 WHEREAS, after several meet and confer efforts throughout March and April 2013, the
9 parties filed a Joint Discovery Letter Brief on June 6, 2013 (Dkt. No. 53);

10 WHEREAS, on June 7, 2013, the Court referred all discovery disputes to a Magistrate
11 Judge (Dkt. No. 54);

12 WHEREAS, pursuant to Magistrate Judge Joseph C. Spero's June 18, 2013 Order (Dkt.
13 No. 57), counsel for both parties met and conferred in person in Court on July 12, 2013 and
14 resolved their dispute;

15 WHEREAS, since that time, the parties have regularly met and conferred on the timing
16 and status of discovery;

17 WHEREAS, because Defendants sold their credit card portfolio to Capital One Financial
18 Corporation ("Capital One") effective May 1, 2012, and Defendants are working with Capital
19 One to obtain the data, documents, and information that Defendants have agreed to ask for and
20 provide in response to Plaintiffs' Requests;

21 WHEREAS, due largely in part to the unusual circumstances caused by the fact that the
22 majority of data, documents, and information responsive to Plaintiffs' Requests resides with non-
23 defendant Capital One, as of August 27, 2013, Defendants have produced 87 documents
24 responsive to three (3) out of 21 of Plaintiffs' Requests for Production and one (1) out of 15 of
25 Plaintiffs' Interrogatories, but are currently in the process of searching for and producing
26 documents responsive to the remaining requests;

27 WHEREAS, as of August 27, 2013, Defendants are in the process of pulling class member
28 call record data for as much of the class period as possible and have represented to Plaintiffs that

1 this will take at least another four to five weeks;

2 WHEREAS, in May 2013, Defendants agreed to provide Plaintiffs with a sampling
3 proposal for class members documents that Defendants maintain relate to the issue of consent,
4 but have not yet done so and are unable to do so until they have reviewed call record data;

5 WHEREAS, Defendants anticipate that, if the parties agree on a sampling process, such
6 production will take longer than its production of class member data, but Defendants do not yet
7 have an estimate of the time it will take to pull such documents;

8 WHEREAS, Plaintiffs' position is that the call record data and documents responsive to
9 Plaintiffs' requests for production are relevant to class certification, as they bear on issues of the
10 class size and scope, the ascertainability of class members, whether Defendants had a common
11 policy of calling class members on their cell phones without prior express consent, and whether
12 willfulness may be proven on a class-wide basis;

13 WHEREAS, following production of data, documents, and information responsive to
14 Plaintiffs' Requests, Plaintiffs will require adequate time to review Defendants' production and
15 depose its employees and 30(b)(6) witnesses.

16 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the parties that
17 the Court adopt the following amended class certification schedule:

18 ~~1. October 16, 2013 at 2:00 p.m. = Case Management Conference during which the~~ (JST)
19 ~~parties will inform the Court of the status of discovery;~~

20 2. November 8, 2013 – Plaintiffs' Motion for Class Certification due;

21 3. December 6, 2013 – Defendants' Opposition to Plaintiffs' Motion for Class
22 Certification due;

23 4. January 3, 2014 – Plaintiffs' Reply in Support of Class Certification due;

24 5. The November 21, 2013 hearing on class certification shall be vacated and reset by
25 the Court according to the Court's schedule continued to January 23,
26 2014 at 2:00 p.m. (JST)

1 **IT IS SO STIPULATED.**

2
3 Dated: August 28, 2013

Respectfully submitted,

4
5 By: /s/ Daniel M. Hutchinson
6 Daniel M. Hutchinson

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25 *Attorneys for Plaintiffs Kenneth Mills, Benjamin Wilkes,*
26 *and the Proposed Class*

27 Dated: August 28, 2013

28 By: /s/ Lisa M. Simonetti
 Lisa M. Simonetti

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1
2 **ATTESTATION**

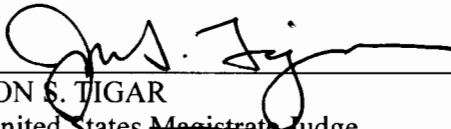
3 I, Daniel M. Hutchinson, am the ECF user whose identification and password are being
4 used to file this Stipulation. I hereby attest that Lisa M. Simonetti has concurred in this filing.

5
6 /s/ Daniel M. Hutchinson
Daniel M. Hutchinson

7 **PROPOSED ORDER**

8 Pursuant to Stipulation, and for good cause shown, it is so ORDERED.

9 Dated: 8/28/13, 2013

10 
11 JON S. TIGAR
United States Magistrate Judge
District